

Persons, in that District, shall be, and the same are hereby continued, and shall remain in full force and effect, in that part of the Province heretofore called Upper Canada, until the first day of November, which will be in the year of our Lord one thousand eight hundred and forty four, and thence to the end of the next Session of the Parliament of this Province, and no longer, any thing in the said Act to the contrary notwithstanding.

III. And be it enacted, that the Act of the Legislature of that part of this Province called Upper Canada, passed in the seventh year of the Reign of His late Majesty William the Fourth, intituled *An Act to establish Agricultural Societies, and to encourage Agriculture in the several Districts of this Province*, shall be, and the same is hereby continued, and shall remain in full force and effect, in that part of the Province heretofore called Upper Canada, until the first day of November, which will be in the year of our Lord one thousand eight hundred and forty-four, and thence to the end of the next Session of the Parliament of this Province, and no longer, any thing in the said Act to the contrary notwithstanding.

7. W. 4. Cap.
23.

C A P. XXIV.

An Act for improving the administration of Criminal Justice in this Province.

[18th September, 1841.]

WHEREAS it is expedient, with a view to improve the administration of Justice in Criminal Cases in this Province, to define under what circumstances persons may be admitted to bail in cases of Felony; and to make better provision for taking examinations, informations, bailments and recognizances, and returning the same to the proper tribunals; and to relax in some instances the technical strictness of criminal proceedings, so as to insure the punishment of the guilty without depriving the accused of any just means of defence; and to abolish the benefit of clergy and some matters of form which impede the due administration of Justice; and to make better provision for the punishment of offenders in certain cases; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted, by the authority of the same, that where any person shall be taken on a charge of felony, or suspicion

Preamble.

Who may be
admitted to
bail on a charge

of felony, and
who may not.

suspicion of felony, before one or more Justice or Justices of the Peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted, shall, in the opinion of the Justice or Justices raise a strong presumption of the guilt of the person charged; such person shall be committed to prison by such Justice or Justices in the manner hereinafter mentioned; but if there shall be only one Justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such Justice shall order the person charged to be detained in custody, and such person shall be taken before two Justices at the least; and where any person so taken, or any person in the first instance taken before two Justices of the Peace, shall be charged with felony or on suspicion of Felony, and the evidence given in support of the charge, shall, in the opinion of such Justices, not be such as to raise a strong presumption of the guilt of the person charged, and to require the committal of such person, or such evidence shall be adduced on behalf of the person charged as shall, in the opinion of such Justices, weaken the presumption of guilt, but there shall, notwithstanding, appear to such justices, in either of such cases, to be sufficient ground for judicial inquiry into the guilt of the person charged, such person shall be admitted to bail by such two Justices in the manner hereinafter mentioned: Provided always, that nothing herein contained shall be construed to require any such Justice or Justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such Justice or Justices, to be meet and conducive to the ends of justice to hear the same.

Before any
person charged
with felony &c.
shall be bailed
or committed,
the Justice
shall take down
in writing the
examination
&c., and bind
witnesses to
appear at trial.

II. And be it enacted, that two Justices of the Peace, before they shall admit to bail, and one or more Justice or Justices, before he or they shall commit to prison, any person arrested for felony, or on suspicion of felony, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, in the presence of the party accused, if he be in custody, who shall have full opportunity afforded him of cross-examining such witnesses, if he shall think proper so to do, and the two Justices admitting to bail shall certify the bailment in writing; and every such Justice shall have authority to summon any person within his jurisdiction, whom he shall have reason to consider capable of giving material evidence concerning any such felony or suspicion of felony, and to examine such person on oath, touching the same, and to bind by recognizance all such persons as know or declare any thing material touching any such felony, or suspicion of felony, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court at which the trial of such offence is intended to be had, then and there to prosecute and give evidence against the party accused; and such Justices and Justice, respectively, shall subscribe all such examinations, informations

tions, bailments, and recognizances, and deliver, or cause to be delivered the same to the proper officer of the Court in which the trial is to be, before, or at the opening of the Court; and in case any person so summoned shall refuse to submit to such examination or to enter into such recognizance, it shall be lawful for the Justice or Justices to commit such person to the common Gaol of the District, County, City or Town, until such person shall submit to such examination, or shall enter into such recognizance, or be discharged by due course of law: Provided that no such examination shall subject the party examined to any prosecution or penalty, or be given in evidence against such party, save on any indictment for having committed wilful and corrupt perjury in such examination.

Examinations
&c., to be delivered to the Court.

III. And be it enacted, that every Justice of the Peace, before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment, shall certify the bailment in writing, and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver or cause to be delivered the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court, in like manner as in cases of felony, and that no traverse or other postponement of any trial thereupon had, shall be allowed except upon special cause shewn to the satisfaction of the said Court or by consent of the prosecutor.

Duty of Justices on charges of misdemeanor.

No traverse allowed.

IV. And be it enacted, that every Coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as shall be material, giving the party accused full opportunity of cross-examination; and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such Coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court.

Duty of Coroner.

V.

When party committed wishes to be bailed, the Justices on notice thereof to forward all informations to Clerk of the Crown.

V. And be it enacted, that when and so often as any person shall be committed for trial by any Justice or Justices, or Coroner as aforesaid, it shall and may be lawful for such Prisoner, his Counsel, Attorney or Agent, to notify the said committing Justice or Justices, or Coroner, that he will so soon as Counsel can be heard, move Her Majesty's Court of Superior Jurisdiction for that part of the Province in which such person stands committed, or one of the Judges thereof, for an order to the Justices of the Peace, or Coroner for the District where such Prisoner shall be confined, to admit such Prisoner to bail, whereupon it shall be the duty of such committing Justice or Justices, or Coroner, with all convenient expedition to transmit to the office of the Clerk of the Crown, close under the hand and seal of one of them, a certified copy of all informations, examinations, and other evidences, touching the offence wherewith such Prisoner shall be charged, together with a copy of the warrant of commitment and inquest, if any such there be, and that the packet containing the same shall be handed to the person applying therefor, in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question.

Same orders to be made as in Habeas Corpus.

VI. And be it enacted, that upon any application to Her Majesty's Court of Superior Criminal Jurisdiction, for that part of the Province within which such person stands committed, or to any Judge thereof, the same order touching the Prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a Habeas Corpus.

Penalty on Justices and Coroners.

VII. And be it enacted, that if any Justice or Coroner shall neglect or offend in any thing contrary to the true intent and meaning of any of the provisions of this Act, it shall be lawful for the Court to whose Officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such Court is hereby authorised and required, upon examination and proof of the offence, in a summary manner, to set such fine upon every such Justice or Coroner as the Court shall think meet.

Provisions to apply to all Justices and Coroners.

VIII. And be it enacted, that the provisions of this Act relating to Justices and Coroners, shall apply to the Justices and Coroners, not only of Districts and Counties at large, but also of all other jurisdictions.

Persons tried for felony to have benefit of Counsel.

IX. And be it enacted, that all persons tried for felonies shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by Counsel, learned in the law, or by Attorney in the Courts where Attornies practice as Counsel.

Same in cases

X. And be it enacted, that in all cases of summary conviction, persons accused shall

shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by Counsel or Attorney.

of summary conviction.

XI. And be it enacted, that when and so often as the attendance of any person confined in any Gaol or Prison in this Province, or upon the limits thereof, shall be required in any Court of Assize and Nisi Prius, or Oyer and Terminer or General Gaol Delivery, or other Court, it shall and may be lawful for the Court before whom such Prisoners shall be required to attend, in its discretion to make order upon the Sheriff, Gaoler or other person having the custody of such Prisoner, to deliver such Prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such Prisoner to the place where the Court issuing such order shall be sitting, there to receive and obey such further order as to the said Court shall seem meet: Provided always, that no Prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the District where he shall be confined.

Orders for delivery of prisoners to be tried at Assizes.

Proviso.

XII. And be it enacted, that all persons who, after the passing of this Act, shall be held to bail or committed to prison for any offence against the law, shall be entitled to require and have on demand (from the person who shall have the lawful custody thereof and who is hereby required to deliver the same,) copies of the examinations of the witnesses, respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words: Provided always, that if such demand shall not be made before the day appointed for the commencement of the Assize or Sessions at which the trial of the person on whose behalf such demand shall be made, is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the Judge or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial, but it shall, nevertheless, be competent for such Judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

Prisoners entitled to copies of depositions against them.

XIII. And be it enacted, that all persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward all depositions (or copies thereof) which have been taken against them, and returned into the Court before which such trial shall be had.

Persons under trial may inspect all depositions.

XIV. And be it enacted, that if any person, whatever, being arraigned upon any indictment for treason, felony, or piracy, shall plead thereto a plea of "not guilty," such person shall, by such plea, without any further form, be deemed to have put himself

A plea of not guilty without more shall put the prisoner on his trial by Jury.

himself or herself upon the Country for trial, and the Court shall, in the usual manner, order a Jury for the trial of such person accordingly.

If he refuse to plead, the Court may order a plea of "not guilty" to be entered.

XV. And be it enacted, that if any person, being being arraigned upon or charged with any Indictment or information for Treason, Felony, Piracy, or Misdemeanor, shall stand mute of malice, or will not answer directly to the Indictment or information, in every such case, it shall be lawful for the Court, if it shall so think fit, to order the proper Officer to enter a plea of "Not Guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Every challenge beyond the legal number shall be void.

XVI. And be it enacted, that if any person indicted for any Treason, Felony, or Piracy, shall challenge peremptorily a greater number of the men returned to be of the Jury, than such person is entitled by Law so to challenge, in any of the said cases, every peremptory challenge beyond the number allowed by Law in any of the said cases, shall be entirely void, and the trial of such shall proceed as if no such challenge had been made.

Attainder of another crime not pleadable.

XVII. And be it enacted, that no plea setting forth any Attainder shall be pleaded in bar of any Indictment, unless the Attainder be for the same offence as that charged in the Indictment.

Jury shall not inquire of prisoner's lands &c., nor whether he fled.

XVIII. And be it enacted, that where any person shall be indicted for Treason or Felony, the Jury impanelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such Treason or Felony.

Benefit of Clergy abolished.

XIX. And be it enacted, that benefit of Clergy with respect to persons convicted of Felony shall be abolished; but that nothing herein contained shall prevent the joinder in any Indictment of any counts which might have been joined before the passing of this Act.

What felonies only shall be capital.

XX. And be it enacted, that no person convicted of Felony shall suffer Death, unless it be for some Felony which was excluded from the benefit of Clergy by the Law in force in that part of this Province in which the trial shall be before the commencement of this Act, or which shall be made punishable with death by some Act passed after that day.

Every punishment for felony after it has been endured shall

XXI. And whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of Felonies not capital, who have undergone the punishment to which they were adjudged; be it therefore enacted, that where any offender

offender had been or shall be convicted of any Felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the Great Seal as to the Felony whereof the offender was so convicted: Provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other Felony.

have the effect of a pardon under the great seal.

XXII. And whereas there are certain Misdemeanors which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; be it therefore enacted, that where any offender hath been or shall be convicted of any such Misdemeanor (except Perjury or subornation of Perjury) and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be by reason of such Misdemeanor an incompetent witness in any Court or proceeding Civil or Criminal.

No misdemeanor (except perjury) shall render a party an incompetent witness after he has undergone the punishment.

XXIII. And be it enacted, that in all cases in which any person shall be charged with Felony, the Officers of the Court before which such person shall be tried, or any proceeding had with regard to such charge, and who shall render any official services in the matter of such charge, or in the course of such trial, to the person so charged with Felony, shall be paid their lawful Fees for all such services out of the Public Funds, in the same manner as other Fees due and payable to them in respect of official services, by them rendered to the Crown, in the conduct of Public prosecutions, are now paid, and no such Fees shall in any case be demanded of or payable by the person charged with such Felony.

Clerk to be paid fees from public funds.

XXIV. And be it enacted, that every person convicted of any Felony not punishable with death, shall be punished in the manner prescribed by the Statute or Statutes specially relating to such Felony; and that every person convicted of any Felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Felonies not capital, punishable under the Act relating thereto, otherwise under this Act.

XXV. And be it enacted, that if any person sentenced or ordered, or hereafter to be sentenced or ordered, to be transported, or who shall have agreed or shall agree to transport or banish himself or herself on certain conditions, either for life

Persons returning from transportation

or

may be tried
where found
&c.

or for any number of years, shall be afterwards at large within any part of this Province, contrary to such sentence, order or agreement, without some lawful cause, before the expiration of his or her term of transportation or banishment, every such offender shall be guilty of Felony, and shall be liable to be transported beyond the Seas, for his or her natural life, and previously to transportation shall be imprisoned for any term not exceeding four years; and every such offender may be tried either in the District, County, or Place where such offender shall be found at large, or in the District, County, or Place, in or at which such sentence, or order of transportation or banishment was passed or made.

Allegation of
sentence &c.
of transporta-
tion sufficient,
without refer-
ence to in-
dictment.

XXVI. And be it enacted, that in any Indictment or information against any offender for being at large in this Province contrary to the provisions of this Act, or of any other Act hereafter to be in force in this Province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender.

Certificate of
the sentence,
by the Clerk of
the Court, suf-
ficient evi-
dence, &c.

XXVII. And be it enacted, that the Clerk of the Court or other Officer having the custody of the Records of the Court where any such sentence or order of transportation or banishment shall have been passed or made, or his Deputy, shall, at the request of any person on behalf of Her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information, and conviction of such offender, and of the sentence or order for his or her transportation or banishment, (not taking for the same more than the sum of five shillings,) which certificate shall be sufficient evidence of the conviction and sentence or order for the transportation or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

The Court may
order hard la-
bor or solitary
confinement as
part of the sen-
tence of impri-
sonment.

XXVIII. And be it enacted, that where any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the Common Gaol, or House of Correction, and also to direct that the offender shall be kept in solitary confinement, for any portion or portions of the term of such imprisonment or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court, in its discretion, shall seem meet.

If a person
under sentence
for another
crime is con-

XXIX. And be it enacted, that whenever sentence shall be passed for Felony on a person already imprisoned under sentence for another crime, it shall be lawful

lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced ; and where such person shall be already under sentence of imprisonment, the Court may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

victed of Felony the Court may pass a second sentence to commence after the expiration of the first.

XXX. And whereas it is expedient to provide for the more exemplary punishment of offenders who commit Felony after a previous conviction for Felony, whether such conviction shall have taken place before or after the commencement of this Act ; Be it therefore enacted, that if any person shall be convicted of any Felony not punishable with death, committed after a previous conviction for Felony, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years ; and in any Indictment for any such Felony committed after a previous conviction for Felony, it shall be sufficient to state that the offender was at a certain time and place convicted of Felony, without otherwise describing the previous felony ; and a certificate containing the substance and effect only, (omitting the formal part) of the Indictment and conviction for the previous Felony, purporting to be signed by the Clerk of the Court or other Officer having the custody of the Records of the Court where the offender was first convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of five shillings and no more, shall be demanded or taken,) shall upon proof of the identity of the person of the offender be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same ; and if any such Clerk, Officer, or Deputy shall utter any false certificate of any Indictment and conviction for a previous Felony, or of any sentence or order of transportation or banishment, or if any person, other than such Clerk, Officer, or Deputy, shall sign any such certificate as such Clerk, Officer or Deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of Felony, and being lawfully convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Punishment for a subsequent offence.

XXXI. And whereas it is expedient to abolish the Punishment of the Pillory ; Be it therefore enacted, that from and after the commencement of this Act, Judgment shall not be given and awarded against any person or persons convicted of any

Punishment of the Pillory abolished.

any offence, that such person or persons do stand in or upon the Pillory, any Law, Statute or usage to the contrary notwithstanding: Provided that nothing herein contained shall extend or be construed to extend in any manner to change, alter or affect any punishment whatever which may now be by Law inflicted in respect of any offence, excepting only the Punishment of the Pillory.

No Report: to be made to the Governor of the case of any capital convict.

XXXII. And be it enacted, that from and after the commencement of this Act, it shall not be necessary that any Report should be made to the Governor, Lieutenant Governor or Person administering the Government, in the case of any prisoner convicted before any Court and now under sentence of death, or who may be hereafter convicted before any Court and sentenced to the like punishment, previously to such sentence being carried into execution; any Law, Usage, or Custom to the contrary notwithstanding.

The Court may abstain from pronouncing judgment on persons convicted of crimes liable to the punishment of death; and order the same to be entered of record.

XXXIII. And be it enacted, that whenever any offender shall hereafter be convicted before any Court of Criminal Judicature, of any crime for which such offender shall be liable to the punishment of Death, and the Court shall be of opinion that, under the particular circumstances of the case, such offender is a fit and proper subject to be recommended for the Royal Mercy, it shall and may be lawful for such Court, if it shall think fit so to do, to direct the proper Officer, then being present in the Court, to require and ask, (whereupon such Officer shall require and ask) whether such offender hath or knoweth any thing to say why Judgment of Death should not be recorded against such offender, and in case such offender shall not allege any matter or thing sufficient in Law to arrest or bar such Judgment, the Court shall and may, and is hereby authorized to abstain from pronouncing Judgment of Death upon such offender, and instead of pronouncing such Judgment to order the same to be entered of Record, and thereupon such proper Officer as aforesaid shall and may and is hereby authorised to enter Judgment of Death on Record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if Judgment of Death had actually been pronounced in open Court against such offender by the Court.

Such record to have the same effect as if pronounced.

XXXIV. And be it enacted, that a Record of every such Judgment so entered, as aforesaid, shall have the like effect to all intents, and be followed by all the same consequences as if such Judgment had actually been pronounced in open Court.

Court to direct execution in certain cases.

XXXV. And be it enacted, that whenever any offender shall hereafter be convicted before any Court of Criminal Judicature, of any offence for which such offender shall be liable to and shall receive Sentence of Death, and the Court shall be of opinion that, under the circumstances of the case, the Judgment of the Law ought

ought to be carried into effect, it shall be lawful for the said Court, and such Court is hereby required, to order and direct execution to be done on such offender in the same manner as any Court is empowered to order and direct execution by the Law as it stood before the passing of this Act.

XXXVI. Provided always, and be it enacted, that nothing in this Act contained shall affect Her Majesty's Royal Prerogative of Mercy.

Not to affect the Royal Prerogative.

XXXVII. And for the more effectual prosecution of accessories before the fact to Felony, Be it enacted, that if any person shall counsel, procure or command any other person to commit any Felony, whether the same be a Felony at Common Law, or by virtue of any Statute or Statutes made or to be made, the person so counselling, procuring, or commanding, shall be deemed guilty of Felony, and may be indicted and convicted as an accessory before the fact to the principal Felony, either together with the principal Felon, or after the conviction of the principal Felon; or may be indicted for and convicted of a substantive Felony, whether the principal Felon shall or shall not have been previously convicted, or shall or shall not be amenable to Justice, and may be punished in the same manner as any accessory before the fact to the same Felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal Felon, in the same manner as if such offence had been committed at the same place as the principal Felony, although such offence may have been committed either on the High Seas or at any place on land, whether within Her Majesty's Dominions or without; and in case the principal Felony shall have been committed within the body of any District or County, and the offence of counselling, procuring, or commanding shall have been committed within the body of any other District or County, the last mentioned offence may be enquired of, tried, determined, and punished in either of such Districts or Counties: Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive Felony, shall be liable to be again indicted or tried for the same offence.

Accessory before the fact may be tried as such, or as a substantive Felon, by any Court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

If the offence be committed in different districts and counties, accessory may be tried in either.

XXXVIII. And for the more effectual prosecution of accessories after the fact of Felony, Be it enacted, that if any person shall become an accessory after the fact to any Felony, whether the same be a Felony at Common Law, or by virtue of any Statute or Statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal Felon, in the same manner as if the act by reason whereof such person shall have become an accessory had been committed at the same

Accessory after the fact may be tried by any Court which has jurisdiction to try the principal felon.

If the offence be committed in different districts or counties, accessory may be tried in either.

same place as the principal Felony, although such act may have been committed either on the High Seas, or at any place on land, whether within Her Majesty's Dominions or without; and in case the principal Felony shall have been committed within the body of any District or County, and the act by reason whereof any person shall have become accessory, shall have been committed within the body of any other District or County, the offence of such accessory may be enquired of, tried, determined and punished in either of such Districts or Counties: Provided always, that no person who shall be once duly tried for any offence of being an accessory shall be liable to be again indicted or tried for the same offence.

Accessory may be prosecuted after conviction of the principal, though the principal be not attainted.

XXXIX. And in order that all accessories may be convicted and punished in cases where the principal Felon is not attainted, Be it enacted, that if any principal offender shall be in anywise convicted of any Felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal Felon had been attainted thereof, notwithstanding such principal Felon shall die, or be pardoned, or otherwise delivered before attainer; and every such accessory shall suffer the same punishment, if such accessory be in anywise convicted, as such accessory should have suffered if the principal had been attainted.

Offences committed on the boundaries of districts and counties may be tried in either.

XL. And for the more effectual prosecution of offences committed near the boundaries of Districts or of Counties, or partly in one District or County and partly in another, Be it enacted, that where any Felony or Misdemeanor shall be committed on the boundary or boundaries of two or more Districts or Counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one District or County and completed in another, every such Felony or Misdemeanor may be dealt with, inquired of, tried, determined, and punished in any of the said Districts or Counties, in the same manner as if it had been actually and wholly committed therein.

Offences committed during a journey or voyage, may be tried in any county or district through which the coach &c. passed.

XLI. And for the more effectual prosecution of offences committed during journeys from place to place, Be it enacted, that where any Felony or Misdemeanor shall be committed on any person, or on or in respect of any property, in or upon any coach, waggon, cart, or other carriage, whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property, on board any vessel whatever employed in any voyage or journey upon any navigable river, canal, or inland navigation, such Felony or Misdemeanor may be dealt with, inquired of, tried, determined, and punished in any District or County through any part whereof such coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or voyage, during which such Felony or Misdemeanor shall have been committed, in the same manner as if it had been actually committed in such

such District or County; and in all cases where the side, centre or other part of any highway, or the side, bank, centre or other part of any such river, canal, or navigation, shall constitute the boundary of any two Districts or Counties, such Felony or Misdemeanor may be dealt with, inquired of, tried, determined, and punished in either of such Districts or Counties, through or adjoining to or by the boundary of any part whereof such coach, waggon, cart, carriage, or vessel, shall have passed in the course of the journey or voyage, during which such Felony or Misdemeanor shall have been committed, in the same manner as if it had been actually committed in such District or County.

When sides, &c. of highway constitute boundary, offender may be tried in either district or county.

XLII. And in order to remove the difficulty of stating the names of all the owners of property, in the case of partners and other joint owners, Be it enacted, that in any Indictment or Information for any Felony or Misdemeanor, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named and another or others, as the case may be; and whenever in any Indictment or Information for any Felony or Misdemeanor, it shall be necessary to mention for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint-stock companies and trustees.

In Indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

XLIII. And be it enacted, that in any Indictment or Information for any Felony or Misdemeanor committed in, upon, or with respect to any Church, Chapel, or Place of Religious Worship, or to any Bridge, Court, Court-house, Gaol, House of correction, Penitentiary, Infirmary, Asylum, or other public building, or any canal, lock, drain or sewer erected or maintained in whole or in part at the expense of the Province, or of any division or sub-division thereof, or on or with respect to any materials, goods, or chattels, whatsoever, provided for or at the expense of the Province, or of any division or sub-division thereof, to be used for making, altering or repairing any bridge or highway, or any Court or other such building, canal, lock, drain, or sewer as aforesaid, or to be used in or with any such Court or other building, canal, lock, drain, or sewer, it shall not be necessary to state such Church, Chapel, or Place of Religious Worship, or such Bridge, Court, Court-House, Gaol, House of Correction, Penitentiary, Infirmary, Asylum, or other building, or such canal, lock, drain, or sewer, or any such materials, goods, or chattels to be the property of any person.

In Indictments for felonies &c. relating to Churches, bridges, or public buildings, property need not be stated as being in any person.

XLIV. And with respect to property under turnpike trusts; Be it enacted that
in

Property of
Turnpike Trustees
may be
laid in Trustees
&c.

in any Indictment or information for any Felony or Misdemeanor, committed on or with respect to any house, building, gate, machine, lamp, board, stone, post, fence or other thing erected or provided, in pursuance of any Act in force in this Province, for making any turnpike road, or of any conveniences or appurtenances thereunto respectively belonging, or any materials, tools or implements provided for making, altering, or repairing any such road, it shall be sufficient to state any such property to belong to the Trustees or Commissioners of such road, and it shall not be necessary to specify the names of any such Trustees or Commissioners.

Indictments
not to abate by
dilatatory plea of
misnomer, &c.

XLV. And for preventing abuses from dilatatory pleas, Be it enacted, that no Indictment or Information shall be abated by reason of any dilatatory plea of misnomer, or of want of addition, or of wrong addition of any party offering such plea, if the Court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such case the Court shall forthwith cause the Indictment or Information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatatory plea had been pleaded.

What defects
shall not vitiate
an indictment
after verdict or
otherwise.

XLVI. And in order that the punishment of offenders may be less frequently intercepted in consequence of technical niceties, Be it enacted, that no Judgment upon any Indictment or Information for any Felony or Misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words, "as appears by the record," or of the words "with force and arms," or of the words, "against the peace," nor for the insertion of the words "against the form of the Statute," instead of the words, "against the form of the Statutes" or *vice versa*, nor for that any person or persons mentioned in the Indictment or Information is or are designated by a name of office or other descriptive appellation, instead of his, her or their proper name or names, nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the Indictment, or exhibiting the Information, or on an impossible day, or on a day that never happened, nor for a want of a proper or perfect venue, where the Court shall appear by the Indictment or Information to have had jurisdiction over the offence.

Certain formal
defects shall
not stay or re-
verse judgment
after verdict.

XLVII. And be it enacted, that no Judgment after verdict upon any Indictment or Information for any Felony or Misdemeanor, shall be stayed or reversed for want of a similitur, nor by reason that the Jury process has been awarded to a wrong Officer upon an insufficient suggestion, nor for any misnomer or misdescription of the Officer returning such process, or of any of the Jurors, nor because any
person

person has served upon the Jury who has not been returned as a Juror by the Sheriff or other Officer; and that where the offence charged shall be an offence theretofore created by any Statute, or subjected to a greater degree of punishment, or excluded from the benefit of Clergy, by any Statute, the Indictment or Information shall after verdict be held sufficient if it describe the offence in the words of the Statute creating the offence, or prescribing the punishment, or excluding the offender from the benefit of Clergy.

XLVIII. And be it declared and enacted, that where the Queen's Majesty, or the Governor, Lieutenant Governor, or Person administering the Government of this Province for the time being, shall be pleased to extend the Royal Mercy to any offender convicted of any Felony, punishable with death or otherwise, and by warrant under the Royal Sign Manual, countersigned by one of the Principal Secretaries of State, or by warrant under the hand and seal at arms of such Governor, Lieutenant Governor, or Person administering the Government as aforesaid, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal for such offender, as to the Felony for which such pardon shall have been granted: Provided always, that no free pardon, or any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any Felony committed after the granting of any such pardon.

Effect of a free or conditional pardon of a convict.

XLIX. And whereas the practice of indiscriminately estreating recognizances for the appearance of persons to prosecute or give evidence, or to answer for a common assault, or in the other cases hereinafter specified, has been found in many instances productive of hardship to persons who have entered into such recognizances; Be it therefore enacted, that in every case where any person bound by recognizance for his or her appearance, (or for whose appearance any other person shall be so bound) to prosecute or give evidence in any case of Felony or Misdemeanor, or to answer for any common assault, or to articles of the peace, shall therein make default, the officer of the Court by whom the estreats are made out, shall, and such Officer is hereby required to prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which every such person, or his or her surety was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person has not appeared, and whether by
reason

Recognizances in certain cases not to be estreated without a Judge's order.

reason of the non-appearance of such person, the ends of Justice have been defeated or delayed ; and every such Officer shall, and such Officer is hereby required, before any such recognizance shall be estreated, to lay such list, if at a Court of Oyer and Terminer or Gaol Delivery in any District or County, or at any of Her Majesty's Superior Courts of Record in this Province, before one of the Justices of those Courts, respectively, or if at a Session of the Peace, before two of the Justices of the Peace, who shall have attended such Courts, who are respectively authorized and required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as shall appear to them, respectively, to be just ; and it shall not be lawful for the Officer of any Court to estreat or put in process any such recognizance without the written order of the Justice, or Justices of the Peace before whom respectively such list shall have been laid.

Rule for the interpretation of this and all criminal acts.

L. And be it enacted, that wherever in this Act or in any other Act relating to any offence, whether punishable upon Indictment or summary conviction, in describing or referring to the offence or the subject matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, any word or words have been or shall be used or employed importing the singular number or the masculine gender only, every such Act shall be understood to include several matters of the same kind, as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction ; and wherever any forfeiture or penalty is or shall be made payable to a party aggrieved, it shall be payable to a body corporate in every case where such a body shall be the party aggrieved.

All Acts repugnant to this Act repealed.

LI. And be it enacted, that all Acts or parts of Acts or provisions of Law in force in this Province, or any part thereof, immediately before the time when this Act shall come into force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall from and after the time when this Act shall come into force, be and they are hereby repealed, except in so far as may relate to any offence committed before the commencement of this Act, which shall be dealt with and punished as if this Act had not been passed.

From what period the imprisonment is to be reckoned.

LII. And be it enacted, that the period of imprisonment in the Provincial Penitentiary, in pursuance of any sentence passed under this Act or under any other Act relating to the punishment of offences by confinement and imprisonment in the Provincial Penitentiary, shall be held to commence from the period of passing

passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said Provincial Penitentiary forthwith, or be detained in custody in any other prison or place of confinement, previously to such removal.

LIII. And be it enacted, that this Act shall commence and take effect from and after the first day of January one thousand eight hundred and forty two.

Commencement of this Act.

C A P. XXV.

An Act for consolidating and amending the Laws in this Province, relative to Larceny and other Offences connected therewith.

[18th September, 1841.]

WHEREAS it is expedient to amend and consolidate the provisions contained in various Statutes now in force in this Province, relative to Larceny and other offences of stealing, and to Burglary, Robbery, and threats for the purpose of Robbery or of Extortion, and to embezzlement, false pretences, and the receipt of stolen property; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*; and it is hereby enacted by the authority of the same, that this Act shall commence from and after the first day of January, one thousand eight hundred and forty two.

Preamble.

Commencement of Act.

II. And be it enacted, that the distinction between Grand Larceny and Petty Larceny shall be abolished; and every Larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as Grand Larceny was before the commencement of this Act; and every Court whose power as to the trial of Larceny was, before the commencement of this Act, limited to Petty Larceny, shall have power to try every case of Larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple Larceny, and also to try all accessories to such Larceny.

Distinction between Grand & Petty Larceny abolished; all Larceny shall be considered as Grand Larceny.

III. And be it enacted, that every person convicted of Simple Larceny, or of any felony